

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

COURT REDACTED

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	File No. 1:18-cr-123
	)	
Jumareo Quartez James,	)	
	)	
Defendant.	)	

TRANSCRIPT OF SENTENCING

Taken at  
United States Courthouse  
Bismarck, North Dakota  
January 24, 2020

BEFORE THE HONORABLE DANIEL L. HOVLAND  
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

MR. RICK LEE VOLK  
U.S. Attorney's Office  
220 E. Rosser Ave  
P. O. Box 699  
Bismarck, North Dakota 58502-0699

FOR THE UNITED STATES

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MS. MICHELLE ANN MONTEIRO  
Assistant Federal Public Defender  
Federal Plaza  
324 North Third Street, Suite 1  
Bismarck, North Dakota 58501

FOR THE DEFENDANT

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1 (The above-entitled matter came before the Court, The  
2 Honorable Daniel L. Hovland, United States District Court  
3 Judge, presiding, commencing at 8:58 a.m., Friday,  
4 January 24, 2020, in the United States Courthouse, Bismarck,  
5 North Dakota. The following proceedings were had and made of  
6 record in open court with the defendant present.)

7 - - - - -

08:58

8 THE COURT: We'll open the record in the case of  
9 *United States versus Jumareo James*. Here on behalf of the  
10 federal government is Assistant U.S. Attorney Rick Volk.  
11 Representing the defendant here is Michelle Monteiro from the  
12 Federal Public Defender's Office. Mr. James, how are you  
13 today?

14 THE DEFENDANT: I'm doing fine, Your Honor.

08:59

15 THE COURT: This is scheduled as a sentencing hearing  
16 on a drug conspiracy offense involving oxycodone.

08:59

17 I have before today reviewed the Presentence  
18 Investigation Report. I read the Sentencing Memorandums of the  
19 parties and Supplements. I reviewed all of the letters of  
20 support submitted on behalf of the defendant by friends and  
21 family members, release status report from the United States  
22 Probation Office from a while ago. Reviewed the Plea  
23 Agreement, the Plea Agreement Supplement.

08:59

24 I went just a few minutes ago, read the partial  
25 transcript of the change of plea hearing that was filed. I

1 spoke with representatives of the United States Probation  
2 Office this morning, so I think I'm up to speed, but, Mr. Volk,  
3 had you filed anything else?

4 MR. VOLK: No, Your Honor.

09:00

5 THE COURT: And, Ms. Monteiro, had you filed anything  
6 else?

7 MS. MONTEIRO: No, Your Honor. I did file a  
8 Sentencing Memorandum. I think you may have said you read  
9 that, but just --

09:00

10 THE COURT: Yeah, I did.

11 MS. MONTEIRO: Okay. No, I have not.

12 THE COURT: And, Mr. James, were you given the  
13 opportunity to review the Presentence Investigation Report?

14 THE DEFENDANT: Yes, Your Honor.

09:00

15 THE COURT: And you've had a chance to talk to your  
16 attorney about that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Mr. Volk, did you have any  
19 objections to the facts or the guideline calculations outlined  
20 in the Presentence Report?

09:00

21 MR. VOLK: I don't, Your Honor. Just for  
22 clarification purposes, Ms. Monteiro and I had some discussion  
23 after I had filed my Plea Agreement -- or, I'm sorry, the  
24 Sentencing Memorandum and Supplement, and I have advised Ms.  
25 Monteiro, as is noted in her -- in her Sentencing Memorandum,

09:01

1 that I would agree to recommend a sentence within the guideline  
2 range based on a base offense level that we had contemplated in  
3 the Plea Agreement. That's the base offense level of 26 as  
4 opposed to 28.

09:01

5 I think factually, based on Mr. James' statements at  
6 the plea hearing, the 28 would be appropriate, but given our  
7 Plea Agreement and what we had agreed to, I advised her I would  
8 recommend a sentence within that total offense level of 26, and  
9 that puts what -- what I've agreed that I would recommend would  
10 be within the range of 110 to 137 months, I believe it was.

09:01

11 THE COURT: Right. Okay.

12 MR. VOLK: Outside of that, no, Your Honor, I didn't  
13 have any other objections or corrections to the Presentence  
14 Report.

09:02

15 THE COURT: Ms. Monteiro?

16 MS. MONTEIRO: Your Honor, yes, I have formally  
17 objected to the base level offense being 28, believing that it  
18 should be 26, as Mr. Volk just discussed. And I did formally  
19 object to the facts contained in paragraph 8 regarding the base  
20 level offense. I had also objected to Mr. James' criminal  
21 history category being V.

09:02

22 Upon discussions with Mr. Volk and his willingness to  
23 agree upon our agreed-upon base level offense of 26 and based  
24 on the admissions that Mr. James did make during the change of  
25 plea hearing, I will withdraw that objection and agree that

09:02

1 Mr. James would be a criminal history category of V. That  
2 would result in a guideline range, as Mr. Volk said, of 110 to  
3 137 months.

09:03

4 THE COURT: But your only basis for the objection to  
5 the base offense level is that the parties entered into a Plea  
6 Agreement contemplating a 26 rather than a 28, correct?

09:03

7 MS. MONTEIRO: Well, I guess factually I am objecting  
8 that I -- I do believe that factually, what has been presented  
9 in the Presentence Investigation, it should be a base level  
10 offense of 26.

09:03

11 THE COURT: And she -- the author said that she based  
12 the base offense level of 28 on admissions made by the  
13 defendant at the change of plea hearing. And I read the  
14 transcript from the change of plea hearing, and he did --  
15 indeed, did admit to quantities that would trigger a base  
16 offense level of 28. I'll respect what the parties did in the  
17 Plea Agreement.

18 MS. MONTEIRO: That would be fine, Your Honor.

09:03

19 THE COURT: But, I mean, we got to be intellectually  
20 honest here. It's -- the quantities are much higher than what  
21 the parties agreed on.

22 Are there any witnesses that intend to testify today?

23 MR. VOLK: I have none, Your Honor.

24 MS. MONTEIRO: No, Your Honor.

09:04

25 THE COURT: All right. So, Mr. James, I'll give both

1 attorneys an opportunity to outline what they're recommending  
2 for a sentence. Then I'll give you a chance to speak, as I'm  
3 required to do, and we'll start with Mr. Volk's recommendation.

4 MR. VOLK: Your Honor, what we're recommending to the  
5 Court is the Court impose a sentence of 110 months of  
6 imprisonment with 3 years of supervision and the \$100 special  
7 assessment to be imposed upon Mr. James.

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09:06 5 ///

6           This was intended sexual activity with a minor, was  
7 the -- is the alleged new criminal conduct. Mr. James is  
8 charged in state court with that at the present time. The  
9 facts surrounding that have been supplied to the Court in our  
09:06 10 Sentencing Memorandum Supplement through the charging document,  
11 the affidavit, and the chat log that existed between Mr. James  
12 and the undercover police officer. And I think it's pretty  
13 clear from those documents, what was intended by Mr. James, /////  
14 ///  
09:06 15 ///  
16 ///

17           This was significant and serious criminal conduct  
18 here by Mr. James in the District of North Dakota. He sold  
19 and/or distributed a significant amount of oxycodone,  
09:07 20 30-milligram pills up on the Fort Berthold Reservation. He was  
21 using local individuals up there to do so, many of his  
22 co-defendants here in this case. He returned multiple times.

23           He was doing this simply for profit. He was -- he's  
24 not a user of oxycodone. He wasn't addicted to oxycodone. He  
09:07 25 was doing this simply for monetary benefit. He contributed to



1 the opioid epidemic that this Court has seen throughout here in  
2 this district, and whether intentionally or simply by his  
3 conduct, this has encouraged others to engage in this similar  
4 activity.

09:07

5           When I look at Mr. James' criminal history, it's  
6 troubling, quite honestly. I mean, he's a Criminal History  
7 Category V, and a lot of his past criminal conduct involves  
8 violence, drugs, intimidation of others, theft, where he's kind  
9 of imposing his will on other people.

09:08

10           He has served prison time previously. He had served  
11 some jail time and then had revocations where prison terms were  
12 imposed. He does have -- his history of compliance on  
13 supervision is not great. There -- it appears when he's been  
14 on probation, that his probation has been revoked.

09:08

15           And when I look at just kind of the type of criminal  
16 activity that's been involved in his past, as I indicated, it's  
17 somewhat troubling. One incident involved what appears to be a  
18 carjacking, and Mr. James, during the course of the attempt to  
19 arrest him on that matter, fled from the police. He ended up  
20 running through yards and actually into somebody else's home  
21 before he was actually apprehended and taken into custody.  
22 That's paragraph 31 of the Presentence Report.

09:08

23           Paragraph 32 talks about a revocation matter where he  
24 was revoked for punching a female 10 to 15 times, choking her,  
25 kicking her.

09:09

1 Paragraph 34 was a domestic battery.

2 Paragraph 35 was a disorderly conduct that appears to  
3 involve him and a number of women that he had taken to a hotel.  
4 He was engaging in sexual activity. There was some dispute  
09:09 5 over money, and then a -- and then a fight broke out between --  
6 between the group.

7 He also still has pending charges in Michigan that  
8 appear to involve allegations of, you know, violent activity  
9 involving child abuse and aggravated assault that are still  
09:09 10 there, and so looking at that history, it -- it's just kind of  
11 repetitive history since his early adulthood. Otherwise, Your  
12 Honor, you know, what the Presentence Report here reflects is  
13 Mr. James acknowledged that effectively he's kind of sold drugs  
14 to make a living. That's referred to in paragraph 64. I know  
09:10 15 his upbringing hasn't been the best, but he's -- he appears to  
16 have been kind of financing his way through life by selling  
17 drugs.

18 Here, while he's been on supervision, there is a  
19 pending revocation petition that I guess probably needs to be  
09:10 20 dismissed once the Court imposes a sentence here.

21 But, you know, he's -- he's maintained some  
22 employment here, but it's been kind of one thing after another.  
23 It looks like he's had seven different employers in 2019.

24 And he's been associating with individuals that  
09:11 25 clearly are not good for him. He's been a little evasive on

09:11

1 supervision. He had -- paragraph 69 refers to his trip out to  
2 Michigan over Thanksgiving, and when he came back, he was -- he  
3 had an office visit here at the U.S. Probation Office. They  
4 wanted to do a UA on him, and, well, he decided to walk away,  
5 at least initially. He walked across the street. Ends up  
6 getting into a car. Well, that was with another person who was  
7 on federal supervision -- presentence supervision.

8 THE COURT: Who was that?

09:11

9 MR. VOLK: That's Robert Robinson. And they were in  
10 a car that was -- that belonged to another person on pretrial  
11 supervision for drug conduct, and that was Mandy Miller. And,  
12 you know, so he's associating with other individuals that, you  
13 know, are involved in similar conduct as he is. Both of those  
14 individuals are involved in drug cases.

09:12

15 It looked like Ms. Miller was living at his place,  
16 based on what probation found. That's referred to in paragraph  
17 84 of the Presentence Report. Her belongings are over at his  
18 apartment, and Ms. Miller ultimately was revoked. Her  
19 supervision -- pretrial supervision was revoked after, you  
20 know, officers found her in possession of methamphetamine over  
21 at Mr. James' apartment.

09:12

22 You know, Mr. James, despite -- I know he has a  
23 number of different jobs. We ended up pulling \$30,000 out of  
24 his apartment. He's -- there's no jobs that are making  
25 \$30,000.

09:12

1 THE COURT: That was a search recently?

2 MR. VOLK: It was a search at his apartment, yes,  
3 Your Honor.




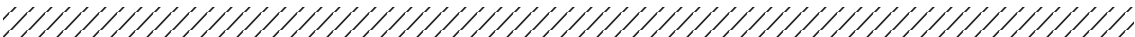
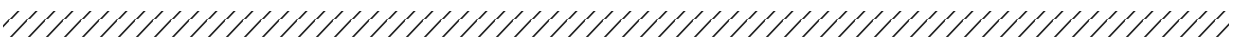
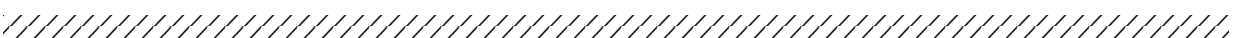
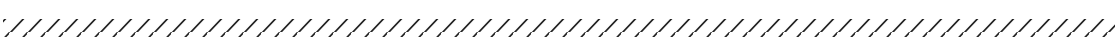
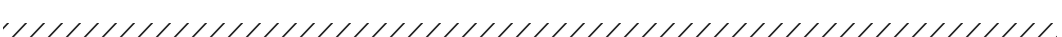
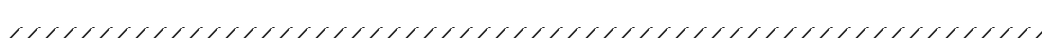
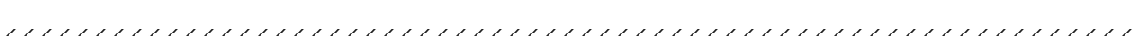
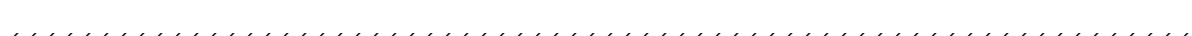
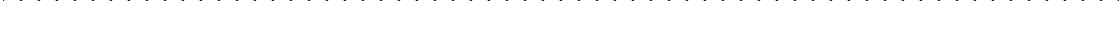
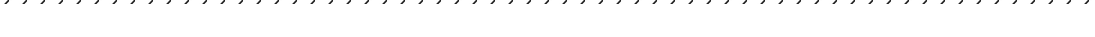
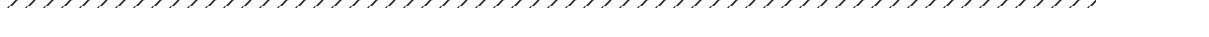
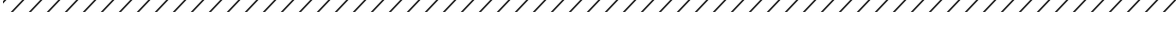
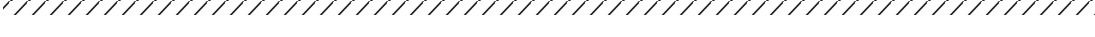
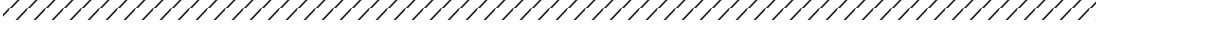
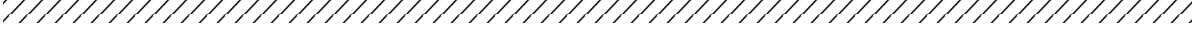
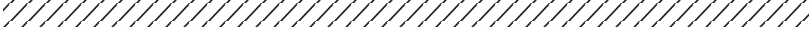
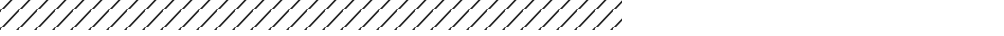
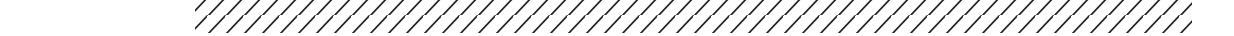

09:13 4 And then ultimately we ended up with the situation  
5 here in early January where, you know, he's alleged to have  
6 engaged in the new criminal conduct with, you know, intentions  
7 of engaging in sex with a 16-year-old, which is pretty clear  
8 from, you know, the affidavit, what his intentions were. I'm  
9 sorry, from the chat log and the affidavit together.

09:13 10 So Mr. James is really kind of going downhill, it  
11 looks like to me, from the point in time that he was initially  
12 released where it appeared he was doing very well. He did --  
13 he did transition successfully from the residential re-entry  
14 center. Once he was released from detention, he went there and  
09:13 15 appeared to be working, appeared to be complying, appeared to  
16 be doing well.

17 But things have rapidly gone downhill here towards  
18 the end of his supervision term and leading up to sentencing,  
19 and he appears to be reverting back to his conduct that led to  
09:14 20 what's -- what's involved in the instant offense conduct, Your  
21 Honor.

22 So ultimately, Your Honor, we think that the term of  
23 imprisonment of 110 months is very reasonable and appropriate  
24 in this case, and we would ask that the Court impose that.

09:14 25 THE COURT: Thank you. Ms. Monteiro.

1 MS. MONTEIRO: Your Honor, we're asking for a  
2 sentence of 60 months, with 5 years supervision to follow.  
3 I'll point out to the Court that there is no mandatory minimum  
4 here, so the Court is free to consider the 3553(a) factors   
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17 His co-defendants have also pled guilty, and that's  
18 one thing I wanted to point out, the low sentence that the  
19 co-defendants received. And I realize Mr. James is more  
09:19 20 involved than these co-defendants, but they received very light  
21 sentences. Mr. Windy Boy received a year and a day, and Ms.  
22 Keyes got time served.

23 THE COURT: Neither of whom had criminal histories  
24 that even came close to what Mr. James had ///  
09:19 25 /// and didn't go out and commit other crimes



1 while awaiting sentencing.

2 MS. MONTEIRO: Correct. And it --

3 THE COURT: It's apples versus orange.

4 MS. MONTEIRO: It is, but the sentence we're asking

09:20

5 for is, in essence, five times what Mr. Windy Boy got. //

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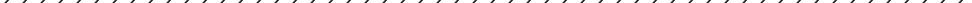
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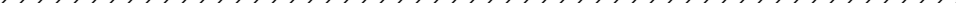
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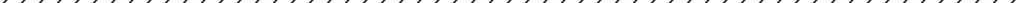
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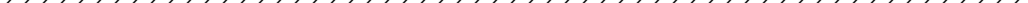
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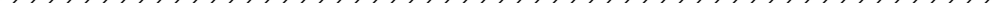
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21 MS. MONTEIRO: Except that when Mr. James was out and  
22 he was doing well and -- he, in essence, had several jobs. He  
23 was doing volunteer work for the United Way. He was working  
24 with the pastor. I --

09:24 25 THE COURT: But he was also committing criminal acts.

1 MS. MONTEIRO: Well, Your Honor, he's been charged  
2 with that in state court, and --

3 THE COURT: I read the text. I wouldn't want to have  
4 -- play that out in front of a jury in North Dakota and see how  
09:24 5 that turns out. You don't have to read too much into the text  
6 to be able to figure out what was going on.

7 And if you search somebody's residence and find  
8 \$30,000 cash, you don't have to be a rocket scientist to figure  
9 out if he's working construction, concrete work in town, he's  
09:24 10 not netting \$30,000 in a six-month timeframe from that work, so  
11 we all know what was going on.

12 MS. MONTEIRO: Your Honor, he actually is in the  
13 process of getting for me documentation as to where that money  
14 came from. He has already provided me with, and I just saw it  
09:24 15 this morning when I came in, a bill of sale from a home that  
16 had been sold in Michigan that he had, so --

17 THE COURT: Who sells a home and then carries \$30,000  
18 cash in an apartment in North Dakota?

19 MS. MONTEIRO: I don't know, Your Honor.

09:24 20 THE COURT: Who does that?

21 MS. MONTEIRO: Some people don't have bank accounts,  
22 so I don't know.

23 THE COURT: Yeah.

24 MS. MONTEIRO: Most of us have bank accounts, but  
09:25 25 some people who have different lifestyles don't. I don't know,

1 Your Honor, but I do know that, like I said, he is working on  
2 documenting it, where this money came from.

3 //  
4 //

09:25

5 And the fact of the matter is when he was out before  
6 this unfortunate arrest -- I agree that the text messages are  
7 problematic, but what I will say is that, first of all, my  
8 understanding is this was -- he was responding to an ad from  
9 somebody purporting to be 27 years old, so this would not be a  
10 situation where he's actively seeking out some underage person.

09:25

11 THE COURT: Well, the ads were -- it was all part of  
12 a sting operation, and the people that do those stings are  
13 smart enough to know that they don't portray themselves as  
14 27-year-olds. They always portray themselves as minors because  
15 that's the only way that you can get somebody that's on the  
16 Internet looking for a minor. So, I mean, I haven't seen the  
17 ads, but I'd be shocked if the ad said anything about an adult.

09:25

18 MS. MONTEIRO: I was told the ad was for a  
19 27-year-old.

09:26

20 THE COURT: Well, the text messages clearly reveal  
21 that we're not talking about a 27-year-old.

09:26

22 MS. MONTEIRO: Correct, and it appears then what  
23 happened is the response was to an ad for a 27-year-old, and  
24 then it turned into a younger person. And one thing I will  
25 point out -- and, again, you know, ignorance of law is not a

1 defense, but 16 is the age of consent in many states, including  
2 Minnesota, which again, it's against the law --

3 THE COURT: Well, it's 15 in Texas too, but that  
4 doesn't make any difference.

09:26

5 MS. MONTEIRO: Right. I agree. I just -- I think  
6 that, again, Mr. James will have to deal with that charge on  
7 his own. I don't know what he's facing on that.

09:26

8 But if we look at his conduct here, if we just take  
9 that out, we look at the fact that he was working three jobs,  
10 he was doing volunteer work for the United Way, he has had a  
11 obviously less than desirable upbringing, he grew up -- his  
12 mother is an addict. We asked his mother to write a letter on  
13 his behalf, and I don't know if the Court was able to read the  
14 letter, but --

09:27

15 THE COURT: Yeah, I did.

09:27

16 MS. MONTEIRO: -- physically his mom was under the  
17 influence when she was writing the letter, and that's pretty  
18 obvious from reading the letter, and it's unfortunate that that  
19 is what Mr. James grew up with. And he grew up with using with  
20 his mother. He grew up selling drugs so his mother didn't have  
21 to prostitute to get drugs.

09:27

22 He never knew his father. He's involved primarily  
23 with his grandparents. Dropped out of school when he was in  
24 the ninth grade, and, unfortunately, selling drugs almost  
25 became a way of life for him, so this is not somebody that has

1 had the opportunities that most of us have had in life, and I  
2 think that's something that should be considered.

09:27 3 I think Mr. James does know and spoke at length, at  
4 least with me and I think in the Presentence Investigation, how  
5 destructive it is to be bringing opiates to this state,  
6 specifically to these rural communities and specifically to the  
7 Fort Berthold Indian Reservation. And I think some people,  
8 when they get involved in this, bringing these drugs here, they  
9 don't understand. They just say, "Oh, yeah, I can make some  
09:28 10 money." I think he's since understood the destruction and the  
11 crisis it has caused by doing this.

12 //////////////////////////////////////  
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09:28 15 //////////////////////////////////////  
16 //////////////////////////////////////

17 So we do think that a 60-month sentence is  
18 appropriate here. It's fair. It's reasonable. It's  
19 consistent with what other people have gotten.

09:28 20 I would also ask the Court to keep in mind that he  
21 did successfully complete Centre. I believe he was there for  
22 158 days, so whatever court -- time the Court thinks is  
23 appropriate, I'd ask you to reduce it by that 5 months that he  
24 successfully completed at Centre.

09:29 25 //////////////////////////////////////

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8 THE COURT: All right. Thank you. Mr. James, I am  
9 also required to give you the same opportunity to speak as  
09:29 10 everyone else has had, so you're free to say whatever you would  
11 like to say here today. You're free to ask questions as well  
12 if you wish.

13 THE DEFENDANT: Yeah, I'd just like to apologize to  
14 the state of North Dakota, and it's been -- it's been hard for  
09:29 15 me my whole life, no -- no one to just, you know, love you and  
16 be there for you, but I wasn't able to have that because my  
17 mother been on drugs my whole life. I never had a father, and  
18 I don't have any siblings, so I had to watch my surroundings  
19 and what they did, and -- and I just didn't -- I never had no  
09:30 20 one. I never had no structure. Like no one really cared for  
21 me.

22 So, yes, I did sell drugs. I started selling drugs  
23 because people were selling drugs to my mother. And I was  
24 16 years old, going to school, and my next-door neighbor said,  
09:30 25 you know, "Your mother owe me \$20," you know, and it hurt.



09:31 1 And I know I have done wrong, and -- and I'm not  
2 perfect, and the stuff that they going to show you on paper is  
3 going, you know, make it like I'm just no good or I'm an animal  
4 or whatever. But I am a good person, you know. You just don't  
5 see certain things. You only seen the bad stuff. That's the  
6 only thing they're going to show you is -- is the downfall.

09:31 7 But I'm a God-fearing man. I love -- I love God and  
8 -- and I know I have done wrong, and I know that I should be  
9 punished for it, but it's just, I just never had no one to help  
10 me or to show me what's right or what's wrong.

09:32 11 Yes, I had my grandparents, but they was at work all  
12 the time, so they -- they couldn't -- you know, they raised the  
13 their kids already, you know. I never had uncles to help -- to  
14 help me do anything. It's just, I had to watch from my  
15 environment. I'm a product of my environment. I'm a product  
16 of what -- what happens when you live in a city where this is  
17 what goes on, and I just ask the Court to understand that.  
18 And, you know, I know that you don't probably understand me,  
19 but I didn't want to be this way. I wanted to be, you know,  
20 successful.

09:33 21 And the reason that I had the money in my home is I  
22 brought the money from home, from Michigan. I had had money  
23 that I had saved because I was going to buy a business down  
24 here, so that's the reason that I had brought the money from  
25 Michigan when I went home to inquire of a business. I wanted

1 to change, and I tried to change, and I tried to do the right  
2 thing, but it just -- it just me.

09:33

3 And I got five children that love me, and I love  
4 them, and I support them. And I pay my child support, and I do  
5 things for them. And that's all I have to say, Your Honor.

6 THE COURT: But is the money that you saved to  
7 accumulate this \$30,000 money from drug trafficking in Michigan  
8 and elsewhere?

9 THE DEFENDANT: No, Your Honor.

09:33

10 THE COURT: How does one save \$30,000 cash --

11 THE DEFENDANT: When --

12 THE COURT: -- otherwise?

13 THE DEFENDANT: When I got locked up -- when I got  
14 indicted in 2018, I had a home that I sold for \$12,000.

09:34

15 THE COURT: All right.

16 THE DEFENDANT: I have a friend that works for  
17 General Motors. She's been in my corner. She gave me \$10,000  
18 just recently. She just came here, and she left on the 25th of  
19 December.

09:34

20 THE COURT: Who's that?

21 THE DEFENDANT: Eureka.

22 THE COURT: What?

23 THE DEFENDANT: Her name is Eureka.

24 THE COURT: Eureka?

09:34

25 THE DEFENDANT: Yes, and she sent the letter and

1 notarized with her check stub. And she had got a bonus for  
2 4,500.

09:34 3 And the other money is that money that I been having  
4 from working. I worked three jobs. When I was in Centre, I  
5 didn't have to pay any money to stay in Centre, so I was  
6 working two jobs for five months. I saved \$7,000.

09:35 7 Two of my kids' mother came down in January of '18 --  
8 of '19. While I was in Centre they both gave me \$2,000 because  
9 they knew that I was going to be moving out to get a apartment,  
10 so I been saving money. It's just not from drug money.

09:35 11 THE COURT: All right. So what'd you do with all the  
12 money that you made selling pills up in the New Town area?  
13 Because you told me you could make 10 to 15 grand in three to  
14 four days selling pills up there. I assume you saved that,  
15 or --

09:35 16 THE DEFENDANT: Yes. Upon my arrest in '18 of June,  
17 they took 23,000 from me. That was a lot of the money.

09:35 18 THE COURT: Right. That's usually what people have  
19 on them when they get caught selling in North Dakota, somewhere  
20 in that ballpark range, but usually on their way back to  
21 Michigan, cash in that general ballpark range.

09:36 22 THE DEFENDANT: But the money that I had is not from  
23 like me saving money from pills or drugs that I already  
24 previously had. Like, you know, in Michigan I am a gambler. I  
25 have won the lottery in 2017 for \$25,000, plus I hit the number

1 twice for 7,500 one time and 2,500 like three months apart,  
2 so --

3 THE COURT: And you're filing tax returns that  
4 reflect those earnings?

09:36 5 THE DEFENDANT: I didn't file them, but it's like  
6 because I had like child -- at the time -- this time I wasn't  
7 like paying my child support or -- the state would take some of  
8 your money for other things, so like a lot of times when people  
9 hit the number, you will give it to like a family member that  
09:36 10 don't owe any taxes or don't owe anything, and they will cash  
11 the ticket in, and that's how you would get the money.

12 MS. MONTEIRO: He's since paid his child support.

13 THE COURT: Well, I'm not going to ask any more  
14 questions about that because you're probably going to dig  
09:37 15 yourself into a bigger hole, but anything more that you want to  
16 say, sir?

17 THE DEFENDANT: I'm just -- I'm apologetic. I know I  
18 done wrong by coming up here, selling pills. I know that I  
19 have other charges that are pending right now that -- that  
09:37 20 looks really bad, but it wasn't --

21 THE COURT: You better not say anything about that,  
22 but -- and I won't ask you any questions about that, but the  
23 first exhibit on a big screen in front of the jury are going to  
24 be the text messages, and that stuff doesn't play well. I've  
09:38 25 seen it play in front of juries in federal court and -- but

1 that's for another day and another court and -- but I've  
2 handled hundreds of catch-a-predator type schemes, so I know  
3 how they work, and I know how those cases play out in front of  
4 North Dakota juries.

09:38

5 And sometimes defendants try to assert the defense  
6 that they thought they were dealing with a 27-year-old, or the  
7 age of consent is actually higher in the state that they came  
8 from, but those defenses generally fall on deaf ears in front  
9 of a jury, in my experience.

09:38

10 And people also raise other defenses of entrapment,  
11 but I've never seen a successful entrapment defense as long as  
12 I've been on the Bench, but it doesn't mean people don't try.  
13 Generally if you've initiated the conversation, it's kind of  
14 difficult to claim that you were entrapped.

09:39

15 But, anyway, is there anything more that you wanted  
16 to say, or --

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: All right. Anything more that either  
19 counsel want to say?

09:39

20 MR. VOLK: No, Your Honor.

21 MS. MONTEIRO: The only thing I wanted to say, Your  
22 Honor, is I did provide a document to the Court that Mr. James  
23 has now completely caught up on his child support.

24 THE COURT: I did see that.

09:39

25 MS. MONTEIRO: Okay. So I just --

1 THE COURT: That's all good.

2 MS. MONTEIRO: -- wanted you to know that.

3 THE COURT: I've reviewed the Presentence  
4 Investigation Report and the Sentencing Memorandums of both  
09:39 5 parties. I incorporate by reference into my judgment all of  
6 the undisputed facts in the Presentence Report and all of the  
7 factual information in the Sentencing Memorandums. And all of  
8 that information is also incorporated by reference into my  
9 assessment of sentencing factors under 18 USC, Section 3553(a).

09:40 10 The Presentence Report established an overall offense  
11 level of 28 and a criminal history category of V. As I noted,  
12 I believe that that calculation is accurate, but I will respect  
13 what the parties had contemplated at the time they entered into  
14 the Plea Agreement as to what the appropriate base offense  
09:40 15 level is, and the parties' agreement was a 26, so I'm going to  
16 leave the Presentence Report as it is, but I'll impose a  
17 sentence in accordance with a base offense level of 26.

18 But I hope that you understand, Mr. James, that the  
19 base offense level for your crime that I'm adhering to is  
09:40 20 certainly less than what the actual quantities are. And you  
21 made some admissions at the change of plea hearing and -- where  
22 one could conclude that you actually were coming here twice a  
23 month. I think you said you may have come a couple of times a  
24 month for six to seven months. And you take the pills that you  
09:41 25 acknowledged as being three to four hundred per trip, and it's

1 going to bump your sentence up considerably higher than what  
2 you're looking at by my respecting the Plea Agreement.

3 And in my experience, having dealt with thousands of  
4 defendants, most defendants, they get caught with their pants  
09:41 5 down drug trafficking tend to minimize the quantities that they  
6 were bringing into the state rather than being completely  
7 honest about it, but I'm not holding that against you either.  
8 But I think that if one wanted to dig a little deeper in this  
9 case, you could certainly establish by more than a

09:41 10 preponderance of the evidence much higher quantities than what  
11 the parties ever agreed on in the Plea Agreement.

12 There have been no motions for any traditional  
13 downward departures in this case, so I need not address that.

14 There has been a request for a variance, giving  
09:42 15 consideration to the sentencing factors under 18 USC,  
16 Section 3553(a). I'm well aware of all of those factors. I've  
17 given them all consideration in this case.

18 And the Eighth Circuit Court of Appeals has  
19 repeatedly said that sentencing judges in this circuit, when  
09:42 20 addressing the 3553(a) factors, are entitled to rely upon  
21 undisputed facts in the Presentence Report. We're entitled to  
22 rely upon information contained in Sentencing Memorandums and  
23 in Supplements. We're entitled to rely upon arguments of  
24 counsel and statements made by a defendant at a sentencing  
09:42 25 hearing. All of that information I rely upon.

1 I will vary in this case simply to honor the Plea  
2 Agreement of the parties, but beyond that, I would not choose  
3 to vary from the guideline range.

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8 So pursuant to the Sentencing Reform Act of 1984,  
9 it'll be my judgment, Mr. James, that you shall be committed to  
10 the custody of the Bureau of Prisons to be imprisoned for a  
11 period of 120 months, less credit for time served, thereafter  
12 placed on supervised release for a period of 3 years, subject  
13 to a number of conditions that I'll summarize. I'm ordering  
14 that you pay a special assessment of \$100. I'm not imposing a  
15 fine of any sort. I believe that's a sentence that's  
16 sufficient but not greater than necessary.

17 And I have taken into consideration in imposing that  
18 sentence the approximate 5 months served at Centre, Inc.

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1           And I don't minimize the environment that you grew up  
2   in and the fact that that probably had a lot to do with molding  
3   your criminal misconduct, but you're now, what, 39 years old?

4           THE DEFENDANT: Yes, Your Honor.

09:45 5           THE COURT: You know right from wrong. You know that  
6   it's wrong to traffic drugs. You know that it's wrong to  
7   commit other crimes that you've been involved in, and you don't  
8   need a mother or father around to tell you that because you've  
9   learned over the course of your adult life what's right and

09:45 10   wrong.

11           I just don't quite understand why you would continue  
12   to engage in the kind of behavior that you were charged with in  
13   state court now because it's just going to muddy up your life  
14   considerably. But maybe you'll be able to negotiate something  
09:46 15   out with the State of North Dakota, and -- in light of the  
16   sentence that you've received here, and -- but have you ever  
17   watched Catch-A-Predator, the TV show?

18           THE DEFENDANT: No, Your Honor.

19           THE COURT: All right. Ever read the Bismarck  
09:46 20   Tribune?

21           THE DEFENDANT: Yes.

22           THE COURT: The conditions of supervised release that  
23   I'm ordering that you comply with are all going to be laid out  
24   in the judgment that I'll sign, and you'll get a copy of the  
09:46 25   judgment.

09:46

1           You'll be required to comply with what are known as  
2   standard conditions of supervised release, and those are  
3   conditions that every defendant sentenced in this country in  
4   federal court is required to comply with. The standard  
5   conditions of supervision require that you live a law-abiding  
6   lifestyle. If you violate any laws of any sort, federal, state  
7   or local laws, that's considered a violation of the conditions  
8   of your supervision.

09:47

9           You're prohibited from using street drugs. You are  
10   also prohibited from even associating with people that use  
11   street drugs, including weed smokers.

09:47

12           You are prohibited from associating with people that  
13   have felony convictions on their record unless the United  
14   States probation officer that's supervising you approves that.

15           You are prohibited for the rest of your life from  
16   ever possessing firearms or ammunition. Congress has said that  
17   if you're convicted of a felony in the federal criminal justice  
18   system, you are barred for life from possessing firearms or  
19   ammunition. Were you aware of that?

09:47

20           THE DEFENDANT: Yes, Your Honor.

09:48

21           THE COURT: And what you need to keep in mind is that  
22   possession of a firearm tends to be a broadly defined term  
23   under federal law. It certainly means you can't own or handle  
24   a gun, but it also means you can't be around guns. So you need  
25   to be careful about who you're associating with, who you're

09:48

1 living with, who you're traveling with in motor vehicles,  
2 because if there's guns in any of those venues and you're  
3 around, they're going to charge you with being a felon in  
4 possession of a firearm or ammunition. You don't have to  
5 handle the gun to be charged and convicted of that crime. Do  
6 you understand?

7 THE DEFENDANT: Yes, Your Honor.

09:48

8 THE COURT: So if you go anywhere in life for the  
9 rest of your life and there's a gun around, you better get  
10 yourself out of there fast as you can run because you'll get  
11 charged with felon in possession.

09:49

12 The conviction rate is extremely high in the federal  
13 system. By "high," I mean 99.5-plus percent. And that crime,  
14 with your criminal history, will get you eight to ten years.  
15 It doesn't matter what judge you're in front of. With a  
16 Criminal History Category V or probably a VI, that's what  
17 you're looking at.

09:49

18 And if you ever get caught up in any drug trafficking  
19 scheme that results in a charge in federal court, whether it's  
20 Michigan, North Dakota, Minnesota or any place else, if there's  
21 a next time for you where you're convicted, it's 15-plus years  
22 in the federal system. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

09:49

24 THE COURT: It doesn't matter what judge you're in  
25 front of. U.S. Attorney's Office is going to certify your

1 prior drug trafficking offense, which ramps up the sentence to  
2 at least 15 years under the current laws.

09:50 3 And then, finally, among the standard conditions is  
4 you're -- you will be assigned a probation officer that you'll  
5 have to check in with regularly, and if you don't check in, it  
6 usually means there's trouble, and then they write you up and  
7 back we are in court.

09:50 8 Special conditions that I'm ordering are that you  
9 must participate in any form of drug or alcohol treatment  
10 recommended by the United States Probation Office. You are  
11 ordered to abstain from using alcohol, street drugs, inhalants  
12 and synthetic drugs. That means shall not use. It includes  
13 marijuana, whether it's legal or not. Is recreational  
14 marijuana legal in Michigan now?

09:50 15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Well, it's not in the federal  
17 system yet.

09:50 18 So you'll be required to submit to random drug and  
19 alcohol screening or testing. You must participate in any  
20 other form of counseling or treatment or programming or classes  
21 recommended by the United States Probation Office.

09:51 22 Another special condition is that you can be placed  
23 in a halfway house at any time while you're on supervised  
24 release and would be required to follow all of the rules and  
25 regulations of that facility.

09:51 1 And, last of all, I'm ordering a search clause, and  
2 search clauses are regularly, uniformly ordered for every  
3 defendant in the federal system and in the state system in  
4 North Dakota, I believe. Search clauses simply mean that while  
5 you're on federal paper, you can be searched any time, any  
6 place, whether it's you, your personal belongings, residences  
7 that you're living in or visiting at, places that you work,  
8 motor vehicles you travel in, computers, computer devices, cell  
9 phones, smart phones. Everything and anything can be searched  
09:51 10 by the United States Probation Office.

11 And they don't need a search warrant or a Court order  
12 to conduct such a search. Everybody that's sentenced in a  
13 federal criminal case has that same condition.

14 None of these conditions that I've ordered are  
09:52 15 unusual or out of the ordinary. You have not in any way been  
16 targeted by the conditions that I've ordered, but do you have  
17 any questions about any of those conditions?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Under the current state of the law, the  
09:52 20 Bureau of Prisons is required to place you within 500 miles of  
21 your residence if there is space available. But the Bureau of  
22 Prisons also strongly recommends that the sentencing judge make  
23 recommendations in their judgments for placement, and they --  
24 BOP tells us that they try to honor the recommendations that we  
09:52 25 make for placement in a particular prison or a particular city

1 or geographical area. And I don't know, Ms. Monteiro, if you  
2 and Mr. James have visited about that, or --

09:53 3 MS. MONTEIRO: Your Honor, just if you could  
4 recommend, you know, whatever the closest appropriate facility  
5 is to his home in Flint, Michigan.

6 THE COURT: Flint, Michigan. Okay. I'll do that.

7 Finally, sir, I need to inform you that you do have a  
8 right to appeal. If you feel you haven't been treated fairly,  
9 you always have a right to appeal in the federal system.

09:53 10 However, the time period for any defendant to ever appeal in a  
11 federal case is 14 days, and the 14 days starts to run today,  
12 as soon as I sign the final paperwork. And the final paperwork  
13 is known as a judgment. I'll sign that today.

14 As soon as I sign it, the attorneys will be  
09:53 15 immediately notified electronically, and that's what starts the  
16 clock ticking for your appeal, so you will have 14 days from  
17 today to appeal anything that I've ordered. I don't hold it  
18 against you if you want to appeal. Everybody has a right to  
19 appeal.

09:54 20 And if you want to appeal, you just need to tell Ms.  
21 Monteiro that that's what you want to do. She can file the  
22 necessary paperwork to protect your appeal rights, but what she  
23 needs to file is just a one-page document called a notice of  
24 appeal. As long as that's filed within 14 days from today,  
09:54 25 your appeal has been protected and preserved. If there's no

1 notice of appeal filed within 14 days, then you've lost your  
2 right to appeal forever. Do you understand that?

3 THE DEFENDANT: Yes.

09:54 4 THE COURT: I would point out that you signed a Plea  
5 Agreement, and in the Plea Agreement you agreed that you would  
6 give up your right of appeal in exchange for any sentence up to  
7 the high end of the guidelines, and the guideline range in this  
8 case was 130 to 162. I varied downward to what the parties had  
9 agreed on, and that guideline range is 110 to 137.

09:55 10 So no matter how you look at it, the sentence was  
11 within the guideline range, so I believe you've given up your  
12 right of appeal in the Plea Agreement, like most defendants do  
13 as long as they're sentenced in accordance with the guidelines,  
14 but do you have any questions at all about your right to  
09:55 15 appeal?

16 THE DEFENDANT: No, sir.

17 THE COURT: Either counsel wish to voice any  
18 objections to the below-guideline sentence that I've imposed in  
19 this case?

09:55 20 MR. VOLK: No, Your Honor. I would note, as I  
21 mentioned earlier, I think we need to dismiss the petition to  
22 revoke his release since the Court has imposed its sentence.

23 And then I believe as well he pled guilty to Count 1,  
24 and Count 2 needs to be dismissed.

09:56 25 THE COURT: I'll dismiss Count 2 with prejudice.

1 I'll dismiss the petition to revoke and all proceedings related  
2 to the revocation petition. But no objections to what's been  
3 ordered?

4 MR. VOLK: No.

09:56

5 THE COURT: Ms. Monteiro?

6 MS. MONTEIRO: No, Your Honor.

7 THE COURT: Mr. James, any questions?

8 THE DEFENDANT: No, sir.

09:56

9 THE COURT: So I'll remand you back to the custody of  
10 the U.S. marshals. It could be anywhere from two weeks to  
11 several months before the BOP tells us where they have chosen  
12 to place you. In the past it would be two to three weeks.  
13 Lately it's two weeks to four months. The wheels at the BOP  
14 aren't moving very quickly, so I --

09:56

15 But you'll remain in North Dakota until the Bureau of  
16 Prisons lets the marshal service know where they're going to  
17 place you. And the BOP will calculate the precise number of  
18 days you've been in custody, and they give you credit for all  
19 of that.

09:57

20 Very well. We'll stand adjourned.

21 (Proceedings concluded at 9:57 a.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: August 25, 2020

/s/ Sandra E. Ehrmantraut  
Certified Realtime Reporter